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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,034	03/25/2004	Robert Allan Young	PUS-P001-041	5815
35246	7590	02/07/2006	EXAMINER	
MOETTELI & ASSOCIES SARL CASE POSTALE 486 GENEVA, CH-1211 SWITZERLAND			SHAFFER, RICHARD R	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/809,034	Applicant(s) YOUNG ET AL.	
	Examiner Richard R. Shaffer	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/25/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slocum (US Patent 5,304,180) in view of Steiner, et al (US Patent 6,669,701).

Slocum discloses a bone plate (**Figure 1**) comprising: two longitudinal axes; a bottom surface; a top surface with holes (**12a-c** and **14a-c**) that communicate with the bottom surface; hole (**12b**) orientated at about 60 degrees from the main longitudinal axis; the holes having wide beveled countersinks (**20**) to allow up to 45 degrees (Column 2, Lines 8-20) of angulation; and the distal end forming a natural curve corresponding to the shape of bone.

Slocum fails to disclose overlapping holes defining threaded surfaces and a locking bone peg having a threaded head to interface with the threaded surfaces of the overlapping holes. Steiner, et al teach (Column 1, Line 66 to Column 2, Line 60) a bone plate having overlapping combination holes to allow for both rigid and flexible osteosynthesis. It was stated (Column 1, Line 43-56) that non-combination holes require surgeons to compromise between the two types which would be less than ideal in situations such as in joints. The combination holes have a threaded portion (**5**) in order to fix the screw to the bone plate, and have corresponding screws with threaded heads

(Column 2, Line 41-44). The screw (11) is interfaced with the threaded portion (5) and does not have threads on the rest of the shaft. A threaded shaft was stated as preferable in situations where the screw would be self-tapping (Columns 3 and 6). However, both screws would equally function with a combination hole. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the combination holes and a screw with a threaded head (and either threaded shaft or not as a matter of design choice) in the bone plate of Slocum in order to provide greater flexibility to the surgeon by allowing both rigid and flexible osteosynthesis simultaneously while still allowing for either or.

In regard to claim 12, Slocum in view of Steiner, et al disclose the claimed invention except for the threaded apertures being spaced about by an optimized 15mm for closing or opening of wedge femoral osteotomies. It would have been obvious to one having ordinary skill in the art at the time the invention was made to determine the optimum distance of 15mm, since it has been held that discovering an optimum value of an effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slocum in view of Steiner, et al and in further view of Cesarone (US Patent 5,851,207).

Slocum in view of Steiner, et al disclose all of the claimed limitations except for the bone plate system as described above in combination with a drill guide engageable with the bone plate. Cesarone teaches (Column 1, Lines 14-37) that using a drill guide minimizes misalignments and cause improperly secured plates. The drill guide (**Figure**

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1) connects to the bone plate and ensures an orientation appropriate for a later bone screw. Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to consider using the drill guide of Cesarone to accurately tap holes to be used for a non-threaded shaft, threaded head screw to correctly implant the screw and to secure the bone plate properly.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday during (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richard Shaffer

Richard Shaffer
February 2nd, 2006


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER